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BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of)
)
Limitations on Commercial Time)
on Television Broadcast Stations)

DOCKET NO. 93-254

To: The Commission

COMMENTS OF BRUNSON COMMUNICATIONS, INC.

Brunson Communications, Inc. ("BCI"), by its attorneys, hereby submits the following comments in response to the Notice of Inquiry, 8 FCC Rcd. 7277, released October 7, 1993, in the above-captioned proceeding.

Brunson Communications, Inc. owns and operates television station WGTW, Channel 48, Burlington, New Jersey, in the Philadelphia-Burlington market. WGTW is an important contributor to diversity in the Philadelphia-Burlington market, since it is the only television station in the area controlled by an African-American.¹

For the majority of its broadcast schedule, WGTW is programmed with a mix of popular syndicated programming, movies,

¹ Dorothy Edwards Brunson is the sole voting stockholder of BCI, and the owner of more than seventy percent of its equity. A substantial proportion of the remainder of its equity is also owned by African-Americans. Since before WGTW went on the air in 1992, Ms. Brunson has served as the station's full-time general manager.

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religious broadcasts and other public service programming. WGTW carries the programs of the Home Shopping Network from 2:00 a.m. to 6:00 a.m. In addition, from time to time during other hours of the broadcast day it carries programs created by advertisers who prefer to make half-hour or hour presentations to viewers in a program form popularly known as "infomercials."

The limits once imposed on commercial matter were grounded in the perception that viewers had no choice but to watch the programming broadcast by their local television operators. Whether that view of the world was justified then, it is not justifiable now. At the core of the Philadelphia-Burlington market, for example, viewers have the option of watching any one of four network-affiliated stations and three independent television stations, including WGTW, that operate from the antenna farm in the Roxborough section of Philadelphia.²

In addition to seven or more commercial choices, viewers who prefer commercial-free programming have the option of tuning into any one of four noncommercial educational television stations. If none of these options interest the viewer, he or she can rent a movie or other program video tape, as the majority of households now have video cassette recorders, or may choose simply to listen to radio or go out to watch a movie.

2 Further, various other independent stations operate on the fringes of the market in areas such as Reading and Allentown, Pennsylvania, Wilmington, Delaware, and Atlantic City and Vineland, New Jersey. In any particular section of the ADI, at least one of these fringe stations will likely be available to potential viewers.

The choices expand considerably in the case of the seventy percent of the households in the market who receive cable television service. Most area cable systems have at least thirty-six channels, providing a panoply of choices for cable subscribers. Many systems have sixty channels or more. Clearly, in 1993 no one in America is being forced to watch an infomercial, or to view more minutes of commercial matter per hour than he or she can tolerate.

The abundance of cable outlets also demonstrates the futility of any effort to ban infomercials from the broadcast screen. If broadcasters like WGTW are no longer permitted to air infomercials, that program form will simply escape to cable, with its ample supply of relatively unregulated channels. Such a result would not serve the public interest. While it would provide perhaps a marginal increase in the amount of noncommercial minutes of entertainment programming available to over the air viewers, it would deprive those who do not subscribe to cable of the viewing choice that infomercials provide. Home shopping may not be to the taste of everyone. Nevertheless, it affords millions of viewers the convenience of making purchasing decisions without battling traffic or crowds. Many of the elderly and disabled find home shopping to be a virtual lifeline.

No particular sanctity should attach to the short form spot announcements that presently dominate the commercial broadcast landscape. BCI submits that viewers will not make better

purchasing decisions based on a thirty-second commercial as opposed to a thirty-minute presentation that examines the merits of a product or service in depth. In a country such as ours where freedom of expression is prized, an advertiser should have the freedom to maximize the amount of information available about his or her product or service through the broadcast medium.

Just as the Commission has, in recent years, relaxed its strictures on the broadcast of commercial matter, so have the courts recognized that commercial speech, like any other form of discourse, is protected under the First Amendment to the United States Constitution. Indeed, BCI contends that, given the present abundance of media outlets, it would be unconstitutional for the Commission to deprive commercial speakers of access to broadcast stations for more than a few minutes at a time. Considering that the Commission has encouraged the broadcast of long-form political programs, there is no reason that those who seek to convince the public of the merits of a new product should be deprived of the same opportunities for free speech as the purveyors of a new political program.

Without a doubt, a television station serves the public interest by providing a vehicle for commercial speakers to reach the public, and for the public to become better informed about various products and services. Nevertheless, it is not BCI's intention to broadcast commercial matter 168 hours a week to the exclusion of all other programming. Indeed, in no week since

WGTW went on the air has the total amount of commercial matter aired over the station exceeded eighty hours in a given week. However, licensees should be given the flexibility to program as they see fit.

If a particular station programs nothing but commercial matter week after week, undoubtedly there will be an opportunity at renewal time for it to demonstrate whether or not its programming has served the public interest. Renewal challengers may also focus the Commission's attention on that question at that time. However, BCI believes that virtually every station now on the air now broadcasts at least some public service programming from time to time in order to discharge its public service obligations more directly. Clearly, the requirement that a licensee demonstrate its entitlement to license renewal is a sufficient incentive to meet the community needs. There is no call for reimposition of commercial limits in order to achieve that result.

The one segment of the broadcast audience that may need the special protection of the Commission is children, as young children do not as easily comprehend and discount the bias inherent in an advertiser-produced program the way that older children and adults do. The ban on excessive commercialization on children's programs, provided for by the Children's Television Act, serves as a more than sufficient barrier to abuses in that area. Older children and adults are perfectly capable of understanding that an infomercial represents the advertiser's point of view,

and is to be treated with the same healthy level of skepticism as a sales brochure that might arrive via direct mail, or a written presentation passed out at a home show, bridal fair or similar event. Adults are not clamoring for the FCC to banish infomercials from the airwaves, and indeed the FCC should not render illegal a practice that harms no one except perhaps a few retail vendors.

Long-form commercial programming serves another function: that of providing financial support for greater programming diversity. In the case of WGTW, a lack of cable carriage until the summer of this year wrought severe financial hardship on WGTW. Were it not for the modest revenue WGTW received during its first year on the air from the Home Shopping Network and other infomercial programmers, it is doubtful that the station could have survived. Thus, the result of a ban on "excess" commercialization would have been to deprive the Philadelphia-Burlington area of its only minority-owned television station. The opportunity that BCI now has to provide viewers with programming choices would be jeopardized by limiting the ability of commercial speakers to reach their audiences through the broadcast medium.

In sum, there is no need for a new regulation imposing commercial limits on broadcasters, or even an "informal" processing guideline that would impose further delays on an

application processing system that is already suffering from severe backlogs.³

Accordingly, the Commission should terminate this proceeding without adopting any additional regulations.

Respectfully submitted,

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³ For example, counsel for BCI has been advised that it currently takes more than two years for the FCC to resolve an objection to a license renewal application that is based on EEO grounds.